

Second Regular Session 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

## SENATE ENROLLED ACT No. 300

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AN ACT to amend the Indiana Code concerning civil procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 25-34.1-3-2, AS AMENDED BY P.L.127-2012, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 2. (a) Except as provided in:

- (1) subsection (b);
- (2) section 8(i) of this chapter; and
- (3) section 11 of this chapter;

no person shall, for consideration, sell, buy, trade, exchange, option, lease, rent, manage, list, or appraise real estate or negotiate or offer to perform any of those acts in Indiana or with respect to real estate situated in Indiana, without a license.

(b) This article does not apply to:

- (1) acts of an attorney which constitute the practice of law;
- (2) performance by a public official of acts authorized by law;
- (3) acts of a receiver, executor, administrator, commissioner, trustee, or guardian, respecting real estate owned or leased by the person represented, performed pursuant to court order or a will;
- (4) rental, for periods of less than thirty (30) days, of rooms, lodging, or other accommodations, by any commercial hotel, motel, tourist facility, or similar establishment which regularly furnishes such accommodations for consideration;
- (5) rental of residential apartment units by an individual employed or supervised by a licensed broker;

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(6) rental of apartment units which are owned and managed by a person whose only activities regulated by this article are in relation to a maximum of twelve (12) apartment units which are located on a single parcel of real estate or on contiguous parcels of real estate;

(7) referral of real estate business by a broker or referral company which is licensed under the laws of another state, to or from brokers licensed by this state;

(8) acts performed by a person in relation to real estate owned by that person unless that person is licensed under this article, in which case the article does apply to ~~him~~; **that person**;

(9) acts performed by a regular, full-time, salaried employee of a person in relation to real estate owned or leased by that person unless the employee is licensed under this article, in which case the article does apply to ~~him~~; **that person**;

(10) conduct of a sale at public auction by a licensed auctioneer pursuant to IC 25-6.1;

(11) sale, lease, or other transfer of interests in cemetery lots; ~~and~~

(12) acts of a broker, who is licensed under the laws of another state, which are performed pursuant to, and under restrictions provided by, written permission that is granted by the commission in its sole discretion, except that such a person shall comply with the requirements of section 5(c) of this chapter; ~~and~~

**(13) the performance of an evaluation of real property by an employee, an officer, a director, or a member of a credit or loan committee of a financial institution, or by any other person engaged by a financial institution, in a transaction for which the financial institution would not be required to use the services of a state licensed appraiser under regulations adopted under Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331 et seq.).**

SECTION 2. IC 32-17-4-2.5, AS AMENDED BY P.L.94-2014, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 2.5. (a) Not later than forty-five (45) days after the court has acquired jurisdiction over all the parties who have an interest in the property that is the subject of the action, the court shall refer the matter to mediation in accordance with the Indiana rules of alternative dispute resolution.

(b) Except as provided in subsection (c), mediation of the case may not begin until an appraiser files an appraisal report with the court.

(c) If each party waives the appraisal of the property, the case may



move to mediation without the filing of an appraisal report.

(d) In its order referring the matter for mediation, the court shall advise the parties:

- (1) that the real or personal property will be sold if the parties are unable to reach an agreement not later than sixty (60) days after the order is issued; and
- (2) that the parties may agree upon a method of the sale of the property, and if the parties do not agree upon a method of the sale of the property, the property may be sold at public auction or by the sheriff under subsection (g).

(e) Except if the parties agree to waive the appraisal of the property, not later than thirty (30) days after the court acquires jurisdiction under subsection (a), the court shall appoint a licensed real estate appraiser to appraise the property. The appraiser shall file the appraisal with the court.

(f) After receiving the appraisal, the court shall notify the parties of the appraised value of the property.

(g) If an agreed settlement is not reached in mediation or if the parties agree upon a method of sale, the court shall not later than thirty (30) days after the date the mediator files a report with the court that the mediation was not successful, or the parties file their agreement establishing the method of sale:

- (1) order the property to be sold using the method that all the parties agree upon; or
- (2) order the parties to select an auctioneer to sell the property. If the parties fail to select an auctioneer not later than thirty (30) days after the court's order to select an auctioneer, the court shall order the sheriff to sell the property in the same manner that property is sold at execution under IC 34-55-6. ~~The manner of appraising property described in this section satisfies the appraisal requirement under IC 34-55-4 or any other statute. However, if the parties waive appraisal of the property:~~

~~(A) the court shall order the sale to proceed without relief from valuation or appraisal under IC 34-55-4 or any other statute; and~~

~~(B) IC 34-55-4-1 does not apply to the sale.~~

(h) At the time the court orders the property to be sold, the court shall notify all lienholders and other persons with an interest in the lien or property, as identified in the title search or lien search required under IC 29-1-17-11 or section 2 of this chapter, of the sale. The property must be sold free and clear of all liens and special assessments except prescriptive easements, easements of record, and irrevocable



licenses, with any sum secured by a lien or special assessment to be satisfied from the proceeds of the sale.

(i) The person who causes a title search to be conducted under section 2 of this chapter or a title or lien search to be conducted under IC 29-1-17-11 is entitled to reimbursement from the proceeds of the sale.

(j) Any person who has paid a tax or special assessment on the property is entitled to pro rata reimbursement from the proceeds of the sale.

(k) Any person may advertise a sale under this section at the person's own expense, but is not entitled to reimbursement for these expenses.

(l) After deduction of the amounts described in subsections (h), (i), and (j) and the reasonable expenses of the sale, the court shall divide the proceeds of the sale among the remaining property owners in proportion to their ownership interest.

(m) If a party having an ownership interest in the property becomes the successful purchaser of the property either through agreed settlement or through auction, that person shall be given a full credit based on the percentage of the person's interest in the property before the purchase.

(n) As used in this subsection, "real estate professional" has the meaning set forth in IC 23-1.5-1-13.5. If the court has ordered that some or all of the property be sold at auction and, at any time before the property is sold at auction, all parties inform the court in writing that they:

- (1) wish to sell some or all of the property through a real estate professional;
- (2) have jointly selected a real estate professional; and
- (3) have agreed upon a listing price for the property;

the court shall rescind its order that the property, or a part of the property, be sold at auction and permit the property to be sold through a real estate professional. If some or all of the property has not been sold at the expiration of the listing agreement with the real estate professional, upon petition by any party, the court shall order the property to be sold at auction in accordance with subsection (h).

SECTION 3. IC 32-26-5-2, AS AMENDED BY P.L.201-2011, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 2. (a) Upon receiving a complaint in writing signed by an owner of land adjoining a hedge or fence to which this chapter applies alleging that the owner of the fence has neglected to cut and trim the hedge or fence, the township trustee shall examine, within



five (5) days after receiving the complaint, the hedge or other live fence.

(b) If the hedge or other live fence that is the subject of the complaint under subsection (a) has not been cut and trimmed, the township trustee shall give the owner of the hedge or other live fence written notice to cut and trim the hedge or other live fence and to remove the brush to the owner's property within thirty (30) days after receiving the notice.

(c) The notice required under subsection (b) must be served by reading the notice to the owner or by leaving a copy of the notice at the owner's usual place of residence. If the owner of properties divided by the hedge or other live fence is not a resident of the township where the hedge or other live fence is located, the notice shall be served by mailing a copy of the notice to the owner directed to the owner's last known post office address.

(d) If the owner or the owner's agents or tenants do not cut and trim the fences and remove the brush, the trustee shall, immediately after the expiration of thirty (30) days, cause the hedge or other live fence to be cut and trimmed and the brush removed to the owner's property.

(e) The trustee shall recover all expenses incurred under subsection (d) by bringing a suit against the owner of the property on which the hedge or live fence is situated before the circuit court or the superior court of the county in which the hedge or other live fence is situated. ~~Collection of the expenses and any judgment recovered shall be without relief from valuation or appraisal laws.~~

SECTION 4. IC 32-28-3-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 6. (a) A person may enforce a lien by filing a complaint in the circuit or superior court of the county where the real estate or property that is the subject of the lien is situated. The complaint must be filed not later than one (1) year after:

- (1) the date the statement and notice of intention to hold a lien was recorded under section 3 of this chapter; or
- (2) subject to subsection (c), the expiration of the credit, if a credit is given.

(b) Except as provided in subsection (c), if a lien is not enforced within the time set forth in subsection (a), the lien is void.

(c) A credit does not extend the time for filing an action to enforce the lien under subsection (a)(2) unless:

- (1) the terms of the credit are in writing;
- (2) the credit was executed by:
  - (A) the lienholder; and



- (B) all owners of record; and
- (3) the credit was recorded:
  - (A) in the same manner as the original statement and notice of intention to hold a lien; and
  - (B) not later than one (1) year after the date the statement and notice of intention to hold a lien was recorded.

(d) If the lien is foreclosed under this chapter, the court rendering judgment shall order a sale to be made of the property subject to the lien. The officers making the sale shall sell the property ~~without any relief from valuation or appraisal laws.~~ **in accordance with IC 34-55-6.**

SECTION 5. IC 32-28-10-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 2. (a) A person employed and working in and about a strip mine has a lien on:

- (1) the strip mine;
- (2) all machinery and fixtures connected with the strip mine; and
- (3) everything used in and about the strip mine;

for labor performed within a two (2) month period preceding the lien. Except as provided in subdivision (b), this lien is superior to and has priority over all other liens. As against each other, these liens have priority in the order in which they accrued.

(b) A state tax lien is superior to and has priority over a lien described in subsection (a).

(c) A person desiring to acquire an employee lien as described in subsection (a) shall file within sixty (60) days after the time the payment became due in the recorder's office of the county where the mine is situated a notice of intention to hold a lien upon property for the amount of the claim. The person filing a lien shall state in the lien notice the amount of the claim and the name of the coal works, if known. If the person filing the lien does not know the name of the coal works, the person shall include in the notice any other designation describing the location of the mine. The recorder shall immediately record the notice in the location used for recording mechanic's liens. The recorder shall receive a fee in accordance with IC 36-2-7-10. If the mine is located in more than one (1) county, the notice of intention to hold a lien may be filed in any county where any part of the mine is located.

(d) Suits brought to enforce a lien created under this section must be brought within one (1) year after the date of filing notice of the lien in the recorder's office. All judgments rendered on the foreclosure of the liens must include:

- (1) the amount of the claim found to be due;



(2) the interest on the claim from the time due; and

(3) reasonable attorney's fees.

~~The judgment shall be collected without relief from valuation, appraisal, or state laws.~~

SECTION 6. IC 32-28-12-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 4. (a) An employee having acquired a lien under this chapter may enforce the lien by filing a complaint in the circuit or superior court in the county where the lien was acquired at any time within six (6) months after the date of acquiring the lien, or if a credit is given, after the date of the credit.

(b) The court rendering judgment for the claim shall declare the claim a lien upon the corporation's property and order the property sold to pay and satisfy the judgment and costs, as other lands are sold on execution or decree. ~~without relief from valuation or appraisal laws.~~

(c) In an action brought under this section, the court shall make orders as to the application of the earnings of the corporation that are just and equitable, whether or not the the relief is asked for in the complaint.

SECTION 7. IC 32-28-14-8, AS AMENDED BY P.L.99-2011, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 8. (a) A homeowners association may enforce a homeowners association lien by filing a complaint in the circuit or superior court of the county where the real estate that is the subject of the lien is located. The complaint:

(1) may not be filed earlier than ninety (90) days, unless:

(A) another person files a foreclosure action on the property that is the subject of the lien; or

(B) a person files written notice to file an action to foreclose the lien under section 9(a)(1) of this chapter; and

(2) must be filed not later than five (5) years;

after the date the statement and notice of intention to hold a lien was recorded under section 6 of this chapter.

(b) If a lien is not enforced within the time set forth in subsection (a), the lien is void.

(c) If a lien is foreclosed under this chapter, the court rendering judgment shall order a sale to be made of the real estate subject to the lien. ~~The officers making the sale shall sell the real estate without any relief from valuation or appraisal laws.~~

SECTION 8. IC 32-29-7-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 9. (a) A sheriff or an agent of the sheriff making a foreclosure sale under this chapter may



not directly or indirectly purchase property sold by the sheriff or the sheriff's agent. If the purchaser of property sold on foreclosure fails to immediately pay the purchase money, the sheriff shall resell the property either on the same day without advertisement or on a subsequent day after again advertising in accordance with this chapter, as the judgment creditor directs. If the amount bid at the second sale does not equal the amount bid at the first sale, including the costs of the second sale, the first purchaser shall be liable for:

- (1) the deficiency;
- (2) damages not exceeding ten percent (10%); and
- (3) interest and costs;

all of which may be recovered in a court of proper jurisdiction by the sheriff.

(b) If the property is sold, the sheriff shall pay the proceeds as provided in IC 32-30-10-14. Every sale made under this chapter ~~must be without relief from valuation or appraisal laws and is made without any~~ right of redemption.

SECTION 9. IC 32-30-3.1-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 12. Any defendant in the main court action for possession of real property may file a complaint setting forth the sale and title under it and any other matter allowed under this chapter. The court proceedings must assess the values, damages, and other amounts of which assessment is required under section 3 of this chapter. If after the main court action the plaintiff has not paid the amount assessed by the court, the court shall set a reasonable time for the plaintiff to pay the defendant. If the plaintiff does not pay the amount within the time set by the court, the court shall order the land sold. ~~without relief from valuation or appraisal laws.~~ If the premises are sold, the defendant is entitled to receive from the proceeds of the sale the amount the defendant is due, with interest, and court costs. The plaintiff is entitled to the remainder of the proceeds of the sale.

SECTION 10. IC 32-33-11-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 4. (a) A person that has a lien under this chapter may enforce the lien by filing the person's complaint in the circuit or superior court of the county in which the lien is filed, at any time within one (1) year after the notice is received for record under section 2(a) of this chapter by the recorder of the county.

(b) If the lien is not enforced within the time prescribed by this section, the lien is void. If the lien is enforced as provided in this chapter, the court rendering judgment shall order the sale to be made, and the officers making the sale shall sell the property ~~without relief~~





whatever from valuation or appraisal laws: in accordance with IC 34-55-6.

SECTION 11. IC 34-54-1-1 IS REPEALED [EFFECTIVE JULY 1, 2016]. Sec. 1: When a judgment is to be executed without relief from appraisal laws; it shall be so ordered in the judgment.

SECTION 12. IC 34-54-1-2 IS REPEALED [EFFECTIVE JULY 1, 2016]. Sec. 2: When a plaintiff has included in one (1) action demands subject to the appraisal laws; with demands made payable without any relief from appraisal laws; the court may render separate judgments upon each demand.

SECTION 13. IC 34-54-1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 3. A judgment recovered against a sheriff, constable, other public officer, administrator, executor, or other person or corporation, or the sureties of any or all of those persons:

- (1) for money collected or received in a fiduciary capacity;
  - (2) for a breach of any official duty; or
  - (3) for money or other articles of value held in trust for another;
- is collectible without stay of execution. or benefit of the valuation or appraisal laws of Indiana:

SECTION 14. IC 34-54-6-2 IS REPEALED [EFFECTIVE JULY 1, 2016]. Sec. 2: All judgments recovered upon bonds; written undertakings; or recognizances executed in any legal proceeding; civil or criminal; are collectible without relief from valuation or appraisements laws of the state of Indiana:

SECTION 15. IC 34-55-4-1 IS REPEALED [EFFECTIVE JULY 1, 2016]. Sec. 1: Property shall not be sold on any execution or order of sale issued out of any court for less than two-thirds ( $\frac{2}{3}$ ) of the appraised cash value of the property; exclusive of liens and encumbrances; except where otherwise provided by law:

SECTION 16. IC 34-55-4-2 IS REPEALED [EFFECTIVE JULY 1, 2016]. Sec. 2: The sheriff; immediately upon levying an execution; shall proceed to ascertain the cash value of the property levied upon:

SECTION 17. IC 34-55-4-3 IS REPEALED [EFFECTIVE JULY 1, 2016]. Sec. 3: (a) For the purpose of appraising the cash value of property:

- (1) two (2) disinterested householders of the neighborhood where the levy is made shall be selected as appraisers; one (1) of whom shall be selected by each of the parties or their agents; or
- (2) in the absence of either party or the party's agent; or upon the failure or refusal of either party after three (3) days notice by the sheriff; to make the selection; the sheriff shall proceed to select



the appraisers:

(b) The appraisers shall immediately proceed to appraise the property according to its cash value at the time, deducting liens and encumbrances. In case of their disagreement as to the value, the sheriff shall select a like disinterested appraiser, and, with the disinterested appraiser's assistance, shall complete the valuation. The appraisalment of any two (2) of them shall be considered the cash value.

SECTION 18. IC 34-55-4-4 IS REPEALED [EFFECTIVE JULY 1, 2016]. Sec. 4: If an appraiser fails to act or to complete the valuation, another appraiser shall be chosen, as provided in this chapter.

SECTION 19. IC 34-55-4-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 5. It is not the duty of the sheriff or the appraisers to ascertain the amount of liens and encumbrances. However, either party may furnish the sheriff with a list of liens and encumbrances, with the amount and nature of each.

SECTION 20. IC 34-55-4-6 IS REPEALED [EFFECTIVE JULY 1, 2016]. Sec. 6: The sheriff shall furnish the appraisers a schedule of the property levied on, with the encumbrances made known to the sheriff. The appraisers shall proceed to fix and set down opposite to each tract, lot, or parcel of real estate, and of the several articles of personal property, the cash value, deducting liens and encumbrances. The appraisers shall return the schedule to the sheriff.

SECTION 21. IC 34-55-4-7 IS REPEALED [EFFECTIVE JULY 1, 2016]. Sec. 7: (a) The appraisers shall take and subscribe an oath, annexed to the appraisalment, to the effect that:

- (1) the property mentioned in the schedule is, to the best of their judgment, worth the sums specified in the appraisalment; and
- (2) the appraisalment is the fair cash value of the property at the time, exclusive of liens and encumbrances.

(b) The sheriff may administer and attest the oath described in subsection (a):

SECTION 22. IC 34-55-4-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 9. When any property levied on remains unsold, the sheriff shall ~~when the sheriff returns the execution, return the appraisalment with the execution, return the execution,~~ stating in the sheriff's return the failure to sell and the cause of the failure.

SECTION 23. IC 34-55-4-12 IS REPEALED [EFFECTIVE JULY 1, 2016]. Sec. 12: Property conveyed by a debtor with intent to hinder, delay, or defraud creditors shall be sold without appraisalment.

SECTION 24. IC 34-55-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 1. (a) Any personal



property taken in execution may be returned to the execution defendant by the sheriff, upon the delivery by the defendant to the sheriff of a written undertaking described in subsection (b).

(b) The written undertaking must be:

- (1) payable to the execution plaintiff, with sufficient surety to be approved by the sheriff; and
- (2) to the effect that the property shall be delivered to the sheriff at a time and place named in the undertaking, to be sold:
  - (A) according to law; or
  - (B) for the payment to the sheriff of
    - (i) the appraised value of the property; or
    - (ii) if the property has not been appraised, the fair value of the property.

SECTION 25. IC 34-55-5-2 IS REPEALED [EFFECTIVE JULY 1, 2016]. ~~Sec. 2: (a) Before the sheriff delivers any part of the property to the defendant, the sheriff shall cause the property to be appraised in the manner prescribed by law when an appraisement of the property is required.~~

~~(b) The defendant may sell or dispose of the property, paying the officer the full appraised value of the property.~~

SECTION 26. IC 34-55-6-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 6. Rents and profits may be sold as other property. ~~the appraisers setting down the value of each year separately.~~



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President of the Senate

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President Pro Tempore

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Speaker of the House of Representatives

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Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

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